IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9388 OF 2005

J.H. Podar High School & anr. ..
Petitioners.
Vs.
State of Maharashtra & Ors. ..Respondents.
...
Mr. R.S. Apte with Mr. N.R. Bubna for the Petitioners.
Mr. M.P. Vashi with Mr. Shaikh Nasir Masiha for Respondent No.3.
...

CORAM: DR. D.Y. CHANDRACHUD, J.

14th July, 2006.

P.C. :

1. The Third Respondent was appointed as an Assistant Teacher in the secondary school conducted by the Petitioners on 20th July, 1987. The Third Respondent holds the B. Sc. Degree as well as a B. Ed. He was confirmed in service on 7th January, 1992. The Third Respondent was retrenched on the ground that he was rendered surplus on 29th June, 2002. Under Rule 26 of the Maharashtra Employees of Private Schools Rules, the retrenchment of a permanent employee is contemplated after furnishing three months' notice on certain grounds including inter alia a reduction of the establishment owing to the reduction in the

number of classes or divisions. Sub rule (2) provides that the retrenchment from service under sub rule (1) shall be subject to certain conditions. Among those conditions the first condition is that the principle of seniority shall ordinarily be observed. Clause (ii) of sub rule (2) of Rule 26 requires the prior approval of the Education Officer and is to the following effect :

> "(2)(ii) Prior approval of the Education Officer in the case of Primary and Secondary Schools or, of the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education shall be obtained by the Management in each case of retrenchment including such cases in which the principle of seniority is proposed to be departed from and a senior member of the staff is proposed to be retrenched when a junior member should have been retrenched, stating the special reasons therefor."

2. The requirement of prior approval of the Education Officer is mandatory. The rules have a statutory force and effect and it has to be emphasised that the approval that is stipulated is specifically a prior approval. Ordinarily the principle of seniority is required to be observed in carrying out retrenchment. Particularly in a case where the principle of seniority is sought to be departed from and a senior member of the staff is sought to be retrenched, while a junior member is retained, special reasons have to be

stated by the management. The requirement of the prior approval of the Education Officer or, as the case may be, of the Deputy Director is a valuable safeguard which is imposed in order to enable a determination to be made as to whether the retrenchment is lawful and bonafide. In the case of aided schools clause (iii) of sub rule (2) also contains an additional safeguard by which employees whose services are proposed to be retrenched are required to be absorbed by the Education Officer or, as the case may be, by the Deputy Director in other institutions. Until the employees are so absorbed the management is not permitted to effect retrenchment. The obligation to absorb the employee elsewhere however does not apply in a case of an unaided school but, even in the case of an unaided school the requirement of prior approval does subsist. Clause (ii) of sub Rule 2 of Rule 26 makes no difference between aided and unaided schools in regard to the requirement of prior approval. In the present case, admittedly an application for approval was submitted to the Education Officer on 28th June, 2002 and the Second Respondent was retrenched on the very next day on 29th June, 2002 without waiting for the approval. In these circumstances, the retrenchment was clearly unlawful.

3. The contention of the management is that the Second Respondent who is a B. Sc. in the subject of agriculture was required to be retrenched since the employee who would be retained was more qualified to teach the secondary classes. This is a matter which would have to be scrutinized by the Education Officer but, until the Education Officer grants his approval to the proposed retrenchment it was not open unilaterally to the management to effect retrenchment. In these circumstances, the order of the School Tribunal setting aside the retrenchment and directing the payment of back wages cannot be faulted. The Petition is dismissed.

4. However, since the application for the grant of approval has been submitted by the management before the Education Officer, there shall be a direction to the Education Officer to consider the same and to pass orders thereon after furnishing to the management and the Third Respondent an opportunity of being heard. The Education Officer shall take final decision within a period of 8 weeks from today. The management shall now proceed to comply with the order of the Tribunal within a period of

two weeks from today. This shall be subject to such final order that may be passed by the Education Officer on the application for retrenchment filed by the management. The Petition is accordingly disposed of.